

RULE 91. PROCEEDINGS IN FORMA PAUPERIS

(a) Application. Any person who intends to bring a civil action under these rules, or to file any motion requiring service under Rule 4, may, without fee, file an application in the court in which such action is to be brought asking for leave to proceed in forma pauperis. Such application shall be accompanied by an affidavit of the plaintiff or moving party setting forth (i) the person's monthly income and necessary monthly expenses; (ii) that the person possesses no other source from which filing or service fees may reasonably be paid; (iii) if the person is receiving poverty-based public assistance income, identify the government program and the nature and the duration of the assistance; and (iv) that the action is brought, or the motion filed, in good faith.

(b) Waiver of Filing Fee. An application for waiver of the filing fee shall be filed with the complaint. The action shall thereupon be entered upon the docket. If the court finds that the action is not frivolous and has been brought in good faith, and if the plaintiff is without sufficient funds to pay the filing fee, it shall order that the fee be waived. There shall be a presumption that a moving party is without sufficient funds if the moving party's affidavit states that the person's income is derived from poverty-based public assistance programs. If the court denies the application, the action shall be dismissed without prejudice, unless within seven days after the denial the plaintiff pays the fee to the clerk.

(c) Payment of Service Costs. An application for payment of service costs shall be filed with the complaint or motion. If the court finds that the action is brought, or the motion filed, in good faith and that the plaintiff or moving party is without sufficient funds to pay all or part of the costs incurred in making service of process, it shall order all or such part of those costs to be paid as an administrative expense of the Superior Court or the District Court as the case may be.

(d) Costs; Reimbursement. If the plaintiff or moving party prevails, any fee or costs paid under subdivision (b) or (c) of this rule may be taxed as costs against the opposing party in favor of the state, if the court finds that that party is able to pay such fee or costs. Before accepting a complaint for filing with the fee waived or disbursing funds for service costs, the clerk shall cause the plaintiff or moving party to sign an agreement to reimburse any fee or costs so waived or paid, if at any time during the pendency of the action the party becomes or is discovered to be financially able to make such reimbursement. The State Court Administrator is authorized to proceed by execution or action to recover for the appropriate court

account all fees or costs which any party becomes liable to pay or reimburse under this subdivision, if such payment or reimbursement is not made voluntarily upon demand.

(e) Removal From the District Court. Any defendant or other party who intends to remove an action from the District Court to the Superior Court under Rule 76C may move for leave to proceed in forma pauperis. The motion shall be filed with the party's answer or reply, and shall be accompanied by the affidavit required by subdivision (a) of this rule. If the court finds that the defense of the party seeking removal is made in good faith, and that the party is without sufficient funds to pay the fees and costs required by Rule 76C, it shall order that those fees and costs be waived and that the clerk forward the action to the Superior Court, where the action shall be entered, and shall proceed as though the fees had been paid.

(f)(1) Appeal From District or Superior Court. A party seeking to appeal to the Superior Court or the Law Court may file or renew an application for leave to proceed in forma pauperis as provided in subdivision (a) of this rule. If the court from which the appeal is taken finds that the appeal is brought in good faith and is not frivolous and that the applicant is without sufficient funds to pay all or part of the costs of entering the appeal, it shall order all or part of those costs to be waived or paid as an administrative expense of the District or Superior Court as the case may be. The court may enter such orders limiting the record on appeal as it deems appropriate. The provisions of subdivision (d) of this rule apply to proceedings under this subdivision.

(f)(2) Copy of Electronic Recording. When the hearing that is subject to the appeal was electronically recorded, and the court finds that all or a portion of the transcript of the hearing is necessary to support the appeal, a copy of the recording of the hearing, in lieu of a paper transcript, shall be filed as part of the record pursuant to M.R. App. P. 6, except that a paper transcript shall be prepared for any child protective proceeding on appeal from the District Court. When the hearing that is subject to the appeal was recorded by an official court reporter, the court shall not pay for a transcript to support the appeal, and the court shall direct the parties to prepare and submit to it an agreed statement of the record pursuant to M.R. App. P. 5(f).

Advisory Committee's Notes
January 1, 2006

Practice and implementation of M.R. Civ. P. 91(f) has indicated the need for clarification regarding the court's obligation to pay for a transcript once an appellant is found qualified for a waiver of costs pursuant to the rule. Some courts have taken the view that the reference to the term "record" in the rule refers to the clerk's record as described in M.R. App. P. 6(b) or the 21-day record formerly addressed in M.R. Civ. P. 74A(a) (abrogated, December 31, 2001). This record included any transcripts in the file, but did not include transcripts that had to be prepared by court reporters or the electronic recording division. Other courts construed the term "record" to include transcripts of hearings that had to be prepared. At one point, funds were sought from the Legislature to pay the additional costs of transcripts for civil appeals that were not constitutionally required but were requested by individuals filing appeals who asserted they could not afford to pay for a transcript to support their appeal. Funds for that purpose were not appropriated.

This amendment to the rules clarifies that when the court finds an individual qualified for a waiver of costs for appeal, this finding does not also commit the court to pay for a transcript of any hearing for which a transcript has not been prepared. In addition, the amendments to the rule describe alternatives available in lieu of court payment for preparation of a transcript. When the hearing that is subject to the appeal was electronically recorded and the court finds that: (1) the appellant financially qualifies for a waiver of costs; (2) the appeal is brought in good faith and is not frivolous; and (3) all or a portion of the transcript of the hearing is necessary to support the appeal, then a copy of the recording of the hearing will be filed with the Law Court as part of the record in lieu of a paper transcript. Depending upon the available hearing recording equipment, the electronic recording may be by cassette tape, CD, or DVD. Parties may obtain copies of the recording themselves as presently provided under M.R. Civ. P. 76H(e) and Administrative Order JB-05-14.

In cases where the proceedings were recorded by an official court reporter, there is no capacity to get a copy of an electronic recording, as there is no official electronic recording of the proceedings. Because the court system does not have available funds to pay for transcripts in such circumstances, no transcripts can be provided. However, where the court finds that (1) an appellant is financially qualified for waiver of costs of appeal, and (2) the appeal is brought in good faith and is not frivolous, the parties are directed to prepare a statement in lieu of the

record in accordance with M.R. App. P. 5(f) which shall then be presented to the Court in accordance with Rule 5(f) and, if approved, forwarded as the record in lieu of a transcript. A statement would have to be prepared and considered pursuant to M.R. App. P. 5(f) only if the available record was insufficient, because of a lack of a transcript, to present the issues for consideration on appeal.

These amendments leave unchanged the trial court's authority under Rule 91(f) to enter such orders limiting the record on appeal, as it deems appropriate.

Advisory Committee's Notes
May 1, 2000

The language of subdivisions (a) and (b) is revised to incorporate the presumption of *in forma pauperis* status for persons receiving poverty-based public assistance as set forth in the Administrative Order of March 1, 1995.

Advisory Committee's Notes
June 2, 1997

Rule 91 (b) is amended to incorporate the more objective test for facial merit provided in subdivision (f) and to clarify that no different standard is intended in the determination to waive fees for initial filing or for appeals.

Advisory Committee's Notes
March 1, 1994

Rule 91(f) is added to provide a procedure for the allowance of *in forma pauperis* appeals in both the District and Superior courts. The party seeking to appeal *in forma pauperis* is to file an application in the lower court containing the same information concerning financial status required by Rule 91(a) for leave to bring a civil action *in forma pauperis*. Thus, the application must be accompanied by an affidavit setting forth the party's income and expenses, the absence of any other resources from which the costs of the appeal may be paid, and the party's representation that the appeal is taken in good faith.

The application is to be granted if the court from which the appeal is to be taken finds that the appellant is proceeding in good faith, that the appeal is not frivolous, and that the appellant lacks sufficient funds. The rule thus abandons the standard that the Law Court established in *Melder v. Carreiro*, 541 A.2d 1293 (Me. 1988), under which in all cases except those involving a "fundamental right" an

appellant seeking to proceed *in forma pauperis* must establish a reasonable likelihood of success on the appeal. While this standard might have the effect of limiting appeals in certain areas where *pro se* representation is common, the *Melder* rule in effect allows the judge who has decided the case on the merits to determine the question of the likelihood that the decision will be overturned. The requirement in Rule 91(f) that the appeal not be frivolous, which is similar to the language of Rule 76(f) allowing the award of expenses against a party in a frivolous appeal in the Law Court, should be adequate to deter unwarranted *in forma pauperis* applications.

Once the appropriate finding has been made, the court may use a number of methods to limit the costs of the appeal. In the first instance, the court need only order “limiting” the record as a further means of reducing costs. This step might involve asking the appellant to identify the specific issues being appealed, providing only a partial transcript, using findings of fact to narrow the issues, or using the provisions of Rule 74(d) for limiting the record to an agreed statement of the parties. *See also* Rule 76F(d).

Advisory Committee’s Notes 1984

Rule 91 is added to provide generally for *in forma pauperis* proceedings in civil actions under the rules. This extension of the right to proceed *in forma pauperis* formerly provided for divorce and separate support and custody actions under Rules 80(l) and 80G(h) is deemed necessary because of the substantial increase in filing fees made by the April 1, 1983, amendments to Rule 54A and D.C.C.R. 54A.

Rule 91(a) is taken from present Rule 80(l)(1), with the addition of language making clear that that rule also applies to motions requiring service under Rule 4. *See, e.g.*, Rule 80(j).

Rules 91(b) and (c) are taken from present Rule 80(l)(2) and (3), with the addition of a requirement that the court find that the action is brought in good faith. This provision is necessary to prevent abuse of the rule and unnecessary resort to the reimbursement provisions set forth in Rule 91(d). To eliminate doubt as to the time of entry, subdivision (b) makes clear that the action is to be treated as entered as of the filing, subject to dismissal without prejudice if the application is denied. Under subdivision (c), an application for costs of serving the complaint must be

filed with the complaint. Thus, all in forma pauperis actions must be commenced by filing rather than by service. *See* Rule 3.

Rule 91(d) is taken from Vermont Rule of Civil Procedure 80(1)(3). It provides for recovery of any disbursements for entry or service against a non-indigent opponent if the plaintiff or moving party prevails. The court should assess the opponent's financial status in the same manner as an applicant's status is assessed upon granting leave to proceed *in forma pauperis*. The rule also provides for reimbursement by the plaintiff or moving party of any fees or costs waived or paid if his financial condition changes during the pendency of the action. Again, the court should apply the same standard in determining financial ability. The rule makes clear that the court Administrator may recover for the court all sums for which any party becomes liable under its provisions.